

June 9, 2016

The Honorable Charles E. Schumer
322 Hart Senate Office Building
Washington, D.C. 20510

Re: Fair Day in Court for Kids Act of 2016 (S. 2540)

Dear Senator Schumer:

We, the undersigned 39 New York-based legal services, civil rights and civil liberties, human rights, and faith organizations, urge you to co-sponsor the Fair Day in Court for Kids Act of 2016 (S. 2540), introduced by Senators Reid, Durbin, Murray, Leahy, Menendez, Franken, Brown, Udall, and Hirono, which would provide appointed counsel for unaccompanied children and other vulnerable immigrants.¹

This bill confirms what New Yorkers have already recognized – the crucial role of counsel for immigrants in removal proceedings. Faced with a dire need, and with only limited federal leadership on the issue, we created new models to support our families and our neighbors attempting to navigate the complex immigration system on their own.

Launched in November 2013, the New York Immigrant Family Unity Project (NYIFUP) is the first universal public defender system for detained immigrants facing deportation in the United States.² Supported by the New York City Council, it serves all detained immigrants before the New York Immigration Court and all detained New York residents before the immigration courts in Newark and Elizabeth, New Jersey, who meet the income criteria and cannot afford counsel. NYIFUP launched a similar project in Buffalo in November 2014. A recent report from the National Immigration Law Center said that **New York's efforts are "at the forefront" of work across the country "to forge a universal right to counsel for detained immigrants."**³

Additionally, since August 2014 and with the support of the New York City Council, New York Community Trust, and the Robin Hood Foundation, the Immigrant Children's Advocate Relief Effort (the ICARE coalition⁴) has screened more than 2,000 children and families in immigration court and now represents more than 1,000 children and families facing deportation in New York City. This effort has been supported by the Mayor's Office of Immigrant Affairs, which has placed staff from the Department of Health and the Department of Education on site at the immigration court to ensure that the children are enrolled in school and in Child Health Plus.

¹ S. 2540 would also provide appointed counsel for persons with disabilities or victims of abuse, torture, or violence, as well as individuals "whose circumstances are such that the appointment of counsel is necessary to help ensure fair resolution and efficient adjudication of the proceedings."

² NYIFUP is a collaborative of the Northern Manhattan Coalition for Immigrant Rights, The Center for Popular Democracy, Make the Road New York, and the Kathryn O. Greenberg Immigration Justice Clinic of Cardozo School of Law, with funding from the New York City Council. NYIFUP legal services providers are Bronx Defenders, The Legal Aid Society, and Brooklyn Defender Services.

³ NAT'L IMMIGRATION LAW CENTER, *BLAZING A TRAIL: THE FIGHT FOR RIGHT TO COUNSEL IN DETENTION AND BEYOND* 14 (2016), available at <https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf>.

⁴ The ICARE coalition includes The Legal Aid Society, The Door, Catholic Charities, Central American Legal Assistance, Make the Road New York, Safe Passage Project, Atlas: DIY, and Kids in Need of Defense (KIND). For more information, see <http://www.safepassageproject.org/lenni-bensons-testimony-to-nyc-council-sept-29-2014/>.

Finally, with the support of the Hon. Robert Katzmann, Chief Judge of the U.S. Court of Appeals for the Second Circuit, and the Mayor's office, and with funding from the Robin Hood Foundation, the Immigrant Justice Corps, the country's first fellowship program dedicated to increasing immigration representation, pairs young attorneys and college graduates with non-profit legal services providers and community-based organizations in New York City. In 2015, its inaugural class of 35 fellows was selected from more than 500 applicants.⁵

Indeed, in expanding access to counsel for immigrants, New York is at the forefront. Following New York's lead, S. 2540 would:

- Require the Department of Justice (DOJ) to appoint counsel to unaccompanied children, individuals with disabilities, and other vulnerable individuals;
- Require the Department of Homeland Security (DHS) to facilitate access to counsel for everyone in detention, including in short-term holding facilities near the southern border;
- Require DHS and the Executive Office for Immigration Review to establish procedures to ensure that legal orientation programs (LOP) are available to all detained immigrants and procedures to ensure LOP are commenced for non-detained immigrants in removal proceedings;
- Require DHS to create a case management pilot project to increase court appearance rates; and
- Require DOJ to submit reports to Congress on the number of individuals identified in the Act who were represented by counsel and the number of individuals who received legal orientation presentations.

The federal government, with limited exceptions, does not currently recognize a right to appointed counsel for immigrants in removal proceedings. Yet children, by definition, lack the legal capacity to represent themselves in court proceedings. Without legal representation, children simply cannot present complex asylum, human trafficking, and other immigration claims. In a lawsuit brought by the American Civil Liberties Union on behalf of children in deportation proceedings without legal representation, a federal court observed that requiring children in immigration court to defend themselves without an attorney "pit[s] juveniles against the full force of the federal government." Furthermore, the judge ruled that "[a] fundamental precept of due process is that individuals have a right 'to be heard 'at a meaningful time and in a meaningful manner' ' before 'being condemned to suffer grievous loss of any kind.' "⁶ Indeed, **immigrants with legal representation are 5.5 times more likely to obtain relief from deportation than those without counsel.**⁷ Yet between July 2014 and August 2015, almost 2,800 removal orders were issued for children who did not have counsel and had been granted just one hearing. At least 40 percent of the children were under 17 years old.⁸

As the administration continues to detain and deport Central American families and children fleeing persecution – including many family members of New Yorkers – access to counsel for children and other vulnerable individuals in removal proceedings is all the more essential. We are proud that New York has taken such important strides in supporting immigrants in removal proceedings. We strongly urge you to join Senator Gillibrand and your other Senate colleagues in co-sponsorship of the Fair Day in Court for Kids Act.

⁵ For more information, see <http://justicecorps.org/>.

⁶ *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119 (W.D. Wash. 2015).

⁷ Ingrid V. Eagly and Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 9 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581161.

⁸ David Rogers, *Under 16 and Ordered Deported—With No Lawyer*, Politico, Nov. 18, 2015, <http://www.politico.com/story/2015/11/under-16-and-ordered-deported-with-no-lawyer-215944>.

For more information, please contact Ruthie Epstein, Deputy Advocacy Director, New York Civil Liberties Union, at repstein@nyclu.org, or Claire Thomas, Director of Training, Safe Passage Project, at claire.thomas@nyls.edu.

Sincerely,

African Services Committee
Anti-Defamation League
Atlas: DIY
Bend the Arc Jewish Action
Brooklyn Defender Services
Bronx Defenders
Cardozo School of Law, Kathryn O. Greenberg Immigration Justice Clinic
Central American Refugee Center
Daughters of Wisdom
The Door
HIAS
Hofstra Law, Youth Advocacy Clinic
Human Rights First
Immigrant Justice Corps
Jewish Council for Public Affairs
Justice Committee of the Albany Sisters of St. Joseph of Carondelet
Kids in Need of Defense (KIND)
Lawyers For Children
The Legal Aid Society
Make the Road New York
MFY Legal Services, Inc.
My Sisters' Place
National Council of Jewish Women
New York Civil Liberties Union
New York Immigration Coalition
Safe Horizon
Safe Passage Project
Sisters of Charity Federation
Sisters of Charity of New York
Sisters of the Presentation
Sisters of St. Joseph of Rochester
Terra Firma: Healthcare and Justice for Immigrant Families
Touro Law Center, Immigration Law Clinic
T'ruah: The Rabbinic Call for Human Rights
Union for Reform Judaism
UnLocal, Inc.
Urban Justice Center
UJA-Federation of New York
Volunteers of Legal Service